Circuit Court for Calvert County
Case No. C-04-CV-20-000235

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 145

September Term, 2023

Theresa White

v.

Town of North Beach, et al.

Graeff,
Nazarian,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: April 19, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Theresa White, appellant, sued the Town of North Beach (the "Town"), appellee, and the Calvert County Board of Commissioners for negligence after sustaining injuries when her leg fell into a water meter pit while walking on a sidewalk maintained by the Town.[1] After a two-day trial in the Circuit Court for Calvert County, a jury found the Town liable for negligence and awarded Ms. White $135,000 in damages. The Town then filed a motion for judgment notwithstanding the verdict ("JNOV") on the ground that it did not have actual or constructive notice of the broken water meter lid. Following a hearing, the court granted the Town's motion and entered judgment in its favor.

On appeal, Ms. White presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err in granting the Town's motion for judgment notwithstanding the verdict?

2. Did the circuit court abuse its discretion in excluding evidence of a prior accident involving a water meter lid located in a different part of town and involving a different type of hazardous condition?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The Town of North Beach Department of Public Works (the "DPW") is responsible for the town's sewage pump stations, sewage collection system, water distribution system, the boardwalk, streets, street lights, ground maintenance, and maintenance of town-held

[1] On January 26, 2023, prior to the start of trial, the court dismissed by consent the Calvert County Board of Commissioners from the case.

buildings. The DPW is also responsible for maintaining the town's sidewalks and parks. In 2017, there were five employees in the Town's DPW.

DPW employees read water meters quarterly so the Town can bill residents for their water usage. At the time of Ms. White's fall, there were 1,200 water meters in the Town of North Beach. The water meters are located 12 to 18 inches below a lid, inside a plastic, tube-shaped pit, with a cable that runs up to the lid. Although there were 1,200 water meters, there were 595 pits. Some water meters had an indoor connection and were not located in a pit, and some pits contained two meters. The DPW had standard operating procedures for the operation of the Town's water system, including training of DPW employees to "evaluate, maintain, [and] inspect the water meter covers."

Water meter lids were made of either cast iron or plastic. The water meter lid at issue in this case was made of cast iron and was part of a town-wide water system installed in the 1990s.

In 2017, DPW employees conducted quarterly meter reads using a touch-read system, which involved using a wand to touch a sensor on the meter lid. There were three black, circle-shaped sensors on the water meter lids. The sensors on the right and left were used for reading the water meter and the center sensor locked the reading device. To read the meter, employees touched a wand to the sensor without needing to apply any pressure or "push on it."

In 2019, the Town began using a radio-read system. With the radio-read system, data and notes could be entered into the handheld devices used to read the meters. Once a

quarterly reading was taken, a report was generated that went to the town's billing department.

I.

2017 Accident

On April 19, 2017, Ms. White was taking her daily morning walk with her family friend, Keith Estep, and their dogs, in North Beach, Maryland. Ms. White and Mr. Estep had been walking together every morning for eight or nine years. They usually met at the boardwalk in North Beach between 5:30 a.m. and 6:30 a.m., and they typically walked the same route, with minimal variations. That morning, as Ms. White and Mr. Estep were walking on the sidewalk, Ms. White "stepped down, and [ ] went down through the sidewalk." Ms. White testified that it was "like the earth opened up." Her left leg went down into a hole, up to her thigh area, and she fell on her right knee, which stopped her fall. Ms. White yelled for help, and Mr. Estep grabbed her and pulled her out of the hole.

Ms. White observed that the water meter lid had broken into three pieces, which had fallen to the bottom of the hole. She went to the North Beach Center, where she reported the broken water meter lid and wrote an incident report. She told the secretary what happened, and that "they might want to go get a lid put on there before somebody else fell in." The secretary told Ms. White she would take care of it.

Prior to the morning of her fall, Ms. White had never noticed nor reported any problems with any water meter lids. That day, she was walking on the sidewalk looking straight ahead, and she did not see anything as she approached the water meter.

Mr. Estep testified that he and Ms. White walked the same route 80 to 90 percent of the time, and the area of the sidewalk where Ms. White fell was part of that typical route. He had never observed "anything other than looking at a normal meter" before Ms. White's fall. Although other walkers, joggers, and "dog people" frequent the area where the fall occurred, many of them stay on the boardwalk. No one else was on the sidewalk when Ms. White fell.

Ms. White suffered injuries to her back, neck, shoulder, and legs as a result of the fall, and she was "almost bedridden" for a week or so after the accident.[2] She was unable to perform her daily household chores for five to six months after the accident and could not drive long distances due to her injuries. She was treated by an orthopedic specialist and received injections and physical therapy to treat her injuries. She made a full recovery after 12 to 14 months.

II.

Trial

On April 9, 2020, Ms. White filed a Complaint alleging that the Town and the Calvert County Board of County Commissioners were negligent in failing to maintain the water meter lid at issue in a reasonably safe condition. On January 26, 2023, a two-day trial began.

[2] Ms. White's husband, Michael White, and youngest son, Collin White, also testified at trial with regard to Ms. White's daily routine prior to the fall and her physical injuries and limitations resulting from the fall.

A.

Deposition Testimony of the Director of the DPW

After the testimony of Ms. White, her family, and Mr. Estep, excerpts of the deposition testimony of Donald P. Bowen, Sr., Director of the DPW for the Town, were read into evidence. Mr. Bowen testified that he had been employed as the Director of DPW for the Town since 2007.

There were no standard operating procedures with regard to the water meter lids and water lines, but the employees did receive "on-the-job training on the water meter covers." He explained that they "read the water meters every quarter, every three months." Isaac Harris was in charge of the water meters. Every three months, when he went around to read the water meters, he would do a visual inspection.

When asked about maintenance of water meter lids, Mr. Bowen stated that there had been calls where the lids had been hit by a car or something knocked it loose, and they would replace the lid. He stated that "[t]here's really no maintenance to the lid. It's either broke or not broke." Calls regarding issues with water meter lids were not documented on a routine basis. Mr. Bowen was not sure how many complaints the DPW received between 2012 and 2017 for loose meter lids caused by vehicles.

There was no formal checklist or document completed when the staff took water meter readings. Once a quarterly reading was taken, a report was generated that went to the Town's billing department. When staff members conducted the quarterly water meter readings, which involved touching a wand on the meter lid, they also visually inspected the

lids. Typically, it took staff "[r]oughly a day and a half" to complete the quarterly meter readings, but it could take up to three days, if there were nonreads.[3] There was no designated date to conduct the readings; it depended on when the billing was scheduled to go out. Mr. Bowen did not usually accompany staff to read the meters, unless there was a problem, which was "[n]ot very often." He did not accompany Mr. Harris during any inspections conducted in 2016 or 2017.

Water meter lids were not replaced on a routine basis, and the lids were not removed unless there was a "reason to remove [them]." The DPW replaced only lids that were identified as damaged during a quarterly inspection. Mr. Harris was instructed to "[d]o a visual while . . . doing the quarterly read." If Mr. Harris discovered a defect or problem with the water meter lid, "he would take care of the problem." Mr. Bowen would order the replacement lids, but Mr. Harris would "get the parts required; he would go make the repair, and he might let [Mr. Bowen] know, hey, there was a water meter top broken here; I fixed it." Staff was instructed to let Mr. Bowen know if there was an issue with a water meter lid, but it was not a standard operating procedure, and there was no written requirement for reporting. Staff would sometimes handle issues themselves and then notify Mr. Bowen that they had fixed the problem.

[3] A nonread occurs when the handheld device used to read the water meter does not register a reading.

There was no record of maintenance performed on a water meter lid or of reported issues.[4] Replacement of water meter lids was a "pretty simple job." Mr. Harris would "go out, remove the old water meter lid and put a new one on. It might be a 5-, 10-minute job." Replacement of the lid involved unscrewing the water meter sensor, placing it in the new lid, and placing the new water meter lid on the pit. The Town generally did not have many water lids that had been replaced.

Mr. Bowen would not "necessarily be aware" of when a water meter lid was replaced due to the DPW's limited staff, his busy schedule, and because maintenance of the water meter lids was "just part of . . . a daily job." His staff was very experienced, and he "felt comfortable that they could take care of a job like that on their own." Based on their long-standing working relationship, he trusted Mr. Harris would report any problems with the water meter lids to him after returning from the inspections.

Mr. Bowen did not know what caused the water meter lid at issue to break, but he noted it was located in a "high-volume area." He received a call about Ms. White's fall, and he sent Mr. Harris to check on the problem and replace the lid. Mr. Harris discovered that the meter lid had broken in half, with two pieces inside the pit, but he did not have any details about it. Mr. Bowen testified that, although lids had chipped in the past, prior to Ms. White's fall, no lid had ever "broken in half like that."

[4] The technology used to read the meters changed over the 30 year period of Mr. Harris' employment, progressing from manual read, to the touch-read system, to the radio-read system currently in use. At the time of Ms. White's fall, the Town used the touch-read system.

There was no standard procedure for documenting defective or broken lids, although Mr. Bowen stated that Mr. Harris may have made "a note in his diary or his work journal." Mr. Harris did not make any written statement with regard to Ms. White's fall and did not photograph the broken lid. Mr. Bowen observed two or three pieces of broken lid in the back of Mr. Harris' truck when Mr. Harris returned from replacing it. Mr. Bowen did not know exactly when the lid at issue had last been inspected or removed, but he stated that the meter would have "been inspected visually at least" at the time of the last quarterly read. He testified that, "before [the incident, the Town] didn't have knowledge of the meter lid being broken or anything being wrong with it." After the accident, the Town did not change its protocol regarding water meter lid maintenance or conduct any additional inspections.

In 2019, Mr. Bowen met with the new Town mayor to evaluate "protocols generally for the Town" and to discuss improvements to the documentation system. The DPW replaced the touch-read system with the radio-read meters, and it developed a list of problem meters and lids as part of that system-wide meter replacement project. Mr. Bowen noted that plastic lids allowed for an easier transmission of the radio read signal and seemed to have better longevity.

B.

Motion For Judgment

At the close of Ms. White's case, the Town moved for judgment on the basis that Ms. White could not satisfy the notice requirement to prove negligence. Citing *Weisner v.*

Rockville, 245 Md. 225 (1967), the Town argued that it did not have a duty to ensure "safe passage" to individuals using the town sidewalks. Rather, the Town could be liable for injuries caused by hazardous conditions only when it had actual notice of the condition or when the condition had existed long enough to give it constructive notice. The Town further contended that, under *Smith v. Baltimore City*, 156 Md. App. 377 (2004), it did not have a duty to regularly inspect the water meter lids and could instead rely on citizen reports to address hazardous conditions.

The Town stated that, "undisputedly, there's no actual notice" of the broken lid because Ms. White testified that she walked in that area every day and never noticed a problem, and Mr. Bowen testified that no one had reported any issues with the water meter lid prior to the accident. The Town asserted that there was no constructive notice of the condition because the Town "never had a water meter lid snap in half before. They had no idea. . . . No one reported any issues with this lid. They never had a previous issue . . . . So there's no way they could have known about this."

Counsel for Ms. White argued that, had the Town "utilized due care in inspecting and maintaining" the water lids, "what happened to Ms. White would not have happened." She alleged that the Town was understaffed and Mr. Harris had health problems that prevented him from properly carrying out his job duties, such as documenting issues he observed and inputting information into the handheld computer system. Counsel argued that the visual inspections conducted on a quarterly basis were inadequate because no pressure was applied when touching the wand to the lid and the inspection's true purpose

was not to ensure the water meter lids were safe, but rather, to take readings to bill customers. She alleged that the Town was unaware of when the water meter lid was "actually physically inspected," and there was no documentation of the quarterly visual inspections.

Counsel further argued that Mr. Harris was the only person who could verify that there were no prior issues with the lid, but he was not required to report, photograph, or document issues, and instead, "[h]e just fixed it on his own." Based on the lack of protocols in place to maintain the water meter lids, Ms. White's counsel alleged that the Town had constructive notice of the defective conditions.[5]

In its rebuttal argument, the Town restated that it had no duty to inspect the meter lids, and Mr. Bowen "certainly would know if someone else had been injured . . . by falling in a hole [from a water meter lid] cracking in half." With regard to the lack of records, the Town stated that it "can't prove a negative . . . [I]t didn't happen, we have no record of it."

The court denied the motion for judgment and the defense presented its case.

C.

Defense Witness

The Town called Mr. Bowen as its only witness. Mr. Bowen expanded on the deposition testimony read into the record during Ms. White's case. The Town's new water

[5] Counsel relied on several cases for the proposition that a municipality is liable for negligence when the evidence shows that it should have known of an unsafe condition based on the length of time it existed and the exercise of due care.

meter reading system, installed after the accident, used handheld devices into which information, notes, and "100 different codes" could be inputted.

Mr. Bowen testified that Mr. Harris had to retire due to a disability, but "he was probably one of the best employees that [Mr. Bowen had] supervised." Mr. Harris had been the acting director of the DPW prior to Mr. Bowen arriving, and he "was very capable of doing work without supervision." Mr. Bowen "never had an issue with him completing a task." Mr. Harris installed the replacement lid for the pit at issue in this case without any problems.

Since he started in 2007, Mr. Bowen was not aware of any water meter lids that had broken in half. In cases where a citizen did report a water meter lid issue, the Town would follow up within an hour. If the problem could not be fixed right away but posed a danger, his crew would block the area off with a cone. With regard to the broken lid that Ms. White reported, Mr. Bowen testified that: "I would think that would have been taken care of in an hour."

Mr. Bowen clarified his testimony about being short-staffed, stating:

> We do have a small crew. We don't -- we don't have any free time, but I wouldn't word it as being short-staffed. We're not overstaffed, for sure, but we did keep up -- we didn't have incidents where we didn't get -- complete our assignments or something that was like this, a safety issue or something. But we definitely didn't have -- weren't overstaffed.[6]

[6] Mr. Bowen admitted to saying the DPW was short staffed three times during his deposition.

Mr. Bowen testified that the radio signal used to read the water meters traveled easier through the plastic lids and was "one factor" in the decision to replace some of the cast iron lids with plastic ones. Although metal sometimes rusts, rust did not have an impact on the structural soundness of the water meter lids.

On cross-examination, Mr. Bowen testified that he had no specialized training or expertise in water meter lids, but he did attend regular training seminars to maintain his Maryland water and wastewater license. Supplier and equipment manufacturers, "field reps," would present training seminars on "new water meter lids, new water meters, [and] new technology." He did not research the life span of the metal water meter lids and did not have any "scientific knowledge" on the "degradation quality of th[e] lids." No expert with such knowledge ever came to inspect the Town's water meter lids prior to the accident. Mr. Bowen also never directed Mr. Harris to inspect the water meter lids outside the visual inspections conducted during quarterly reads. The DPW crew, however, was "riding around daily doing different tasks," so they were "constantly looking for issues" and "relying on residents."

There was no checklist related to water meter lids because maintaining them was "a simple task." Prior to Ms. White's accident, the last quarterly inspection of the water meter lid at issue was conducted on January 25, 2017. Mr. Bowen was unsure if the lid had been "actually physically manipulated."

Since 2007, Mr. Bowen could recall "maybe four instances," including the incident involving Ms. White, involving calls related to "injuries for people stepping on a water

meter lid."[7] In each case, the Town responded and conducted an investigation. In two or three of these incidences, the Town photographed the lids at issue. With regard to the water meter lid at issue here, because Ms. White reported the problem directly to the Town Hall receptionist and it was in a high-traffic area, Mr. Harris replaced the lid within an hour without waiting for it to be photographed. Mr. Bowen testified that "[t]here was nothing to document, except for a broken meter lid." After Ms. White's accident, and the other three instances involving a reported injury from a water meter lid, the Town did not "go out and inspect all of the water meter lids to make sure they were safe."

Ms. White introduced notes taken by Marsha Steiner, the Town Secretary at the time of the incident, into evidence. Mr. Bowen had observed Ms. Steiner writing on her yellow note pad at her desk in her capacity as Town Secretary. Ms. Steiner would document calls regarding problems on her notepad and then either call or email Mr. Bowen about the issue. One notation on the note pad read: "9524 Seagull water meter lid constantly being moved." When asked if "this was the way the secretary of the Town of North Beach was recording when things were being reported," Mr. Bowen replied: "Yes, it appears to be." At the close of its case, the Town renewed its motion for judgment and the court reserved on the issue.

[7] Mr. Bowen was not aware of any water meter lids that had broken in half. He clarified his testimony regarding cracks and chips in the water meter lids, stating that he "misspoke" about cracks in the lids. He explained that certain water meter lids had risers, "a cone shape that sits on top of the plastic to reduce the size of the lid that would be needed to be on the pit." The cracks he referred to in his deposition testimony were cracks in the "collar part . . . not the lid itself," caused by vehicular traffic. When these types of cracks occurred, the pit could fill up with water, debris, and gravel, so the Town would replace the riser and the lid. In cases where the lids were not damaged or impacted by cracks in the riser, the lids were reused when the risers were replaced.

III.

Verdict

The jury returned a verdict in favor of Ms. White. It awarded damages in the amount of $135,000, $127,662.76 for medical expenses and $7,337.24 for noneconomic damages. Counsel for the Town stated that her motion for judgment would convert to a motion for JNOV, and she would be re-raising it in writing.

IV.

Judgment Notwithstanding the Verdict

On February 1, 2023, the Town filed a motion for JNOV, asserting that the evidence presented at trial was legally insufficient to show that the Town had notice, actual or constructive, of the broken water meter lid prior to Ms. White's fall. The Town argued that there was no evidence of actual notice presented at trial, and Ms. White's assertion that the Town had constructive notice because it "failed to perform routine inspections of the town's 595 water meter lids" was erroneous under Maryland law.

Moreover, the Town asserted that there was no evidence to show that the broken lid "existed for a sufficient length of time that it would have been reported to [the Town]." The evidence instead showed that the lid suddenly broke into pieces as Ms. White stepped on it, and she and Mr. Estep had not noticed any visible problems with the lid prior to it breaking, despite walking "essentially the same route every single morning since 2011." The Town had no knowledge of any issues with the meter lid until after Ms. White's fall,

and there was no evidence that any Town water meter lid had ever snapped in half prior to the incident at issue.

In her response brief, Ms. White argued that the evidence showed that the Town "could have and should have known that the subject water meter lid was defective." Ms. White alleged that the jury's finding that the Town failed to exercise due care was supported by evidence that the DPW was understaffed, inadequately trained, failed to maintain checklists and proper documentation, and performed inadequate inspections. Ms. White conceded that she could not prove the Town had actual notice of the dangerous condition, but she asserted that, even if they did have notice, there was no available evidence of it because the Town did not have any reporting or documentation protocols regarding water meter lids.

On February 27, 2023, the court granted the Town's motion for JNOV, setting aside the judgment entered in favor of Ms. White. On March 14, 2023, Ms. White filed a motion for reconsideration or, in the alternative, for appropriate relief, alleging that the court improperly granted the Town's motion for JNOV without a hearing, in violation of Maryland Rule 2-311(e).[8] The Town joined Ms. White's request that the court hold a hearing on the motion for JNOV "to ensure compliance with Maryland Rule 2-311(e)."

[8] Rule 2-311(e) provides that:

> When a motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the court shall determine in each case whether a hearing will be held, but it may not grant the motion without a hearing.

On June 1, 2023, the court held a hearing on the motion for JNOV. The Town reiterated the arguments made in its motion that there was no evidence presented at trial to support a finding that the Town had actual or constructive notice of the damaged water meter lid. The Town noted that, under Maryland law, it was not required to inspect the lids and was permitted to rely on citizen reports of dangerous conditions. It argued that the facts in *Smith* were analogous to the present case because, in *Smith*, although there was evidence that City employees were aware that vehicles occasionally bumped and displaced crosswalk signs, the court nonetheless held the City was not liable for negligence because it did not have knowledge that the particular sign at issue was not visible to oncoming traffic when the accident occurred.

Here, there was no evidence relating to how long any defect in the meter lid had existed, and the DPW director testified that, in the 15 years he worked for the Town, a water meter lid had never snapped in half. The Town also asserted that notice of three prior incidents involving injuries from water meter lids over a 15-year period did not put it on notice that this particular lid was hazardous.

Ms. White argued that the Town was aware "there was potential" for the water meter lids to move out of place and cause injury, but the Town did not take any action to ensure the water meter lids were in a safe condition. Ms. White distinguished the facts in *Smith*, asserting that the defective water meter lid in this case was a trap that the Town was in the best position to discover, unlike the very visible sign involved in *Smith*, which any person could easily observe had been knocked over by a vehicle.

In reply, the Town argued that Maryland negligence law made it "crystal clear" that it was not required to conduct inspections and did not have an absolute duty to provide safe passage. The Town argued that, in each case Ms. White cited regarding constructive notice, the defects "had existed for some period of time" and were clearly visible, and therefore, they should have been discovered. The Town also asserted that Ms. White's position improperly shifted the burden of proof to the Town, requiring it to show that it did not have knowledge of the defect.[9] Although the Town expressed sympathy for Ms. White, it reiterated that "evidence that we had notice . . . is an element of this claim. And in this case, there is simply . . . no evidence to support that at all."

The court granted the motion for JNOV, stating, as follows:

> I find that the Town did not have actual or constructive notice of this particular water meter defect. It was not open or obvious. Further, the Town is not the insurer of safety.
>
> From the testimony, the water meter was -- appeared to be in fine condition the day before, and [Ms. White] was an avid walker in this particular vicinity, and no one noticed that this thing was in any way defective. And there is no notice that any other water meters had the same issue. So, therefore, I am going to grant the motion and enter judgment in favor of the Town of North Beach against [Ms. White].
>
> This appeal followed.

[9] Ms. White alleged that Mr. Harris, the employee who would have knowledge of any prior broken lids, was not produced for a deposition and did not testify at trial, and therefore, she had "no way of discovering" whether the Town had constructive knowledge of the defect. The Town noted in response that Ms. White could have subpoenaed Mr. Harris to testify, and there was no evidence that Mr. Harris "would not have reported" defective lids.

DISCUSSION

I.

JNOV

Ms. White contends that the court erred in granting the Town's motion for JNOV. She argues that the Town was responsible for maintaining the "well-traveled" sidewalk in safe condition, and as such, it was required to conduct proper inspections and keep appropriate records of all prior incidents involving its water meter lids. Although there was no evidence to show that the Town had direct evidence of any defect in this lid, she asserts that there was sufficient evidence presented to show that the Town had constructive notice of the possibility of a defect in the water main lids. Ms. White contends that the Town cannot argue that it did not have notice of the hazardous condition at issue when it failed to physically inspect the lid, and relied instead on citizen reports, but it did not keep track of any such citizen reports relating to problems with water meter lids prior to her fall.

The Town contends that the court properly granted the motion for JNOV because there was no evidence showing that it had notice of any defect in the water meter lid prior to Ms. White's fall. The Town asserts that, because the evidence showed that any defect was not readily observable, Ms. White was required to prove that the Town had actual notice of the broken lid, which she failed to prove. Alternatively, the Town argues that there was no evidence that it had constructive notice of any defect because, under Maryland law, it was not required to perform routine inspections of the water meter lids, and neither the nature of the alleged defect or evidence that the defect had existed for a sufficient length

of time indicated that a defect would have been reported to the Town, and therefore, been known by the Town.

A.

Standard of Review

A motion for JNOV under Rule 2-532 "tests the legal sufficiency of the evidence." *Gallagher v. H.V. Pierhomes, LLC*, 182 Md. App. 94, 101 (2008) (quoting *Impala Platinum, Ltd. v. Impala Sales (USA), Inc.*, 283 Md. 296, 326 (1978)).[10] "[A] party is entitled to [JNOV] when the evidence at the close of the case, taken in the light most favorable to the nonmoving party, does not legally support the nonmoving party's claim or defense." *Francis v. Johnson*, 219 Md. App. 531, 563 (2014) (internal citations omitted), *cert. denied*, 442 Md. 516 (2015).

When assessing a motion for JNOV, we review whether the circuit court was legally correct. *Town of Riverdale Park v. Ashkar*, 474 Md. 581, 607 (2021). In making this determination, "we must view the evidence and the reasonable inferences to be drawn from it in the light most favorable to the party who opposed the motion, and determine whether the facts and circumstances only permit one inference with regard to the issue presented." *Houghton v. Forrest,*183 Md. App. 15, 26 (2008), *aff'd in part and vacated in part (on other grounds)*, 412 Md. 578 (2010).

To this end, "we apply the same analysis as the trial court." *Smithfield Packing Co.*

[10] Md. Rule 2-532 provides that "[i]n a jury trial, a party may move for judgment notwithstanding the verdict only if that party made a motion for judgment at the close of all the evidence and only on the grounds advanced in support of the earlier motion."

v. Evely, 169 Md. App. 578, 591, *cert. denied*, 396 Md. 10 (2006). Where the evidence "permits but one conclusion, the question is one of law and the motion must be granted." *Id.* at 592 (quoting *Univ. of Balt. v. Iz*, 123 Md. App. 135, 149 (1998)). In reviewing the denial of a motion for JNOV, our inquiry is:

> [w]hether on the evidence adduced, viewed in the light most favorable to the non-moving party, any reasonable trier of fact could find the elements of the [claim] by a preponderance of the evidence. If there is even a slight amount of evidence that would support a finding by the trier of fact in favor of the [non-movant], the motion for judgment should be denied.

State v. Jones, 197 Md. App. 638, 663 (2011), *rev'd on other grounds*, 425 Md. 1 (2012) (quoting *Washington Metro. Area Transit Auth. v. Djan*, 187 Md. App. 487, 491-92 (2009)). "Thus, if the nonmoving party offers competent evidence that rises above speculation, hypothesis, and conjecture, the JNOV should be denied." *Barton v. Advanced Radiology P.A.*, 248 Md. App. 512, 524 (2020), *cert. dismissed*, 474 Md. 122 (2021).

B.

Analysis

In an action for negligence, the plaintiff must prove: "'1) that the defendant was under a duty to protect the plaintiff from injury, 2) that the defendant breached that duty, 3) that the plaintiff suffered actual injury or loss, and 4) that the loss or injury proximately resulted from the defendant's breach of duty.'" *Marrick Homes LLC v. Rutkowski*, 232 Md. App. 689, 698 (2017) (quoting *Rowhouses, Inc. v. Smith*, 446 Md. 611, 631 (2016)). With respect to a duty by the Town, this Court has explained:

> Generally, a municipal corporation owes a duty to persons lawfully using its public streets and sidewalks to make them reasonably safe for passage . . .

> This duty is not absolute and the municipality is not an insurer of safe passage . . . If, however, a person is injured because a municipality failed to maintain its streets, and the municipality had actual or constructive notice of the dangerous condition that caused the injury, the municipality may be held liable in negligence.

Smith, 156 Md. App. at 383 (emphasis added) (internal citations omitted). *Accord Colbert v. Mayor and City Council of Baltimore*, 235 Md. App. 581, 589 (2018) ("in order for the City to be held liable for negligence, appellant was required to show that it had actual or constructive notice" of the bad condition that caused damage).

Thus, to establish that the Town had a duty here, Ms. White had to produce evidence that permitted the jury to find that the Town had actual or constructive notice of the broken water meter lid. Actual notice is "'knowledge on the part of the corporation, acquired either by personal observation or by communication from third persons, of that condition of things which is alleged to constitute the defect.'" *Colbert*, 235 Md. App. at 588 (quoting McQullin, *The Law of Municipal Corporations*, § 54:176 (3d ed., July 2017 update)). Ms. White does not argue that the Town had actual notice. Instead, she asserts that the Town had constructive notice.

"Constructive notice is notice that the law imputes based on the circumstances of the case." *Colbert*, 235 Md. App. at 588. "A municipality is charged with constructive notice when the evidence shows that—as a result of the 'nature' of a defective condition or the 'length of time it has existed'—the municipality would have learned of its existence by exercising reasonable care." *Id.* (quoting *Hartford Cas. Ins. Co. v. City of Baltimore*, 418 F.Supp.2d 790, 793 (D. Md. 2006)). *Accord Smith*, 156 Md. App. at 386 ("[W]hen

the evidence shows that a 'bad condition' is such that, by virtue of its nature or the length of time it has existed, the municipality would have learned of it by the exercise of due care, the municipality may be found to have constructive knowledge of its existence.").[11]

Whether a municipality had notice of a defective condition usually is a question of fact for the jury. *See Smith,* 156 Md. App. at 386 (where there is any evidence that a dangerous condition existed long enough that it would have been reported, the issue of constructive notice is for the fact-finder). But, when there is no evidence that a municipality should have learned of the condition based on the nature of the defect or the length of time it existed, judgment as a matter of law is appropriate. *Id.*

In *Smith*, 156 Md. App. at 380, a lawsuit was filed against the City of Baltimore based on a misaligned pedestrian crossing signal. This Court stated that the nature of the defect was not such as to permit a reasonable inference that citizens would have reported it to the City authorities, and there was no evidence showing that the defect existed for a sufficient length of time that it would have been reported to the City and known to the City. *Id.* at 386. Under these circumstances, this Court held that "evidence that the City did not conduct roadway inspections but instead relied on citizen reports to learn of roadway

[11] Ms. White argues that this Court "dealt with an almost identical factual scenario" in *Anne Arundel Co. v. Fratantuono*, 239 Md. App. 126, 141 (2018). In that case, we upheld a judgment against the county for negligence based on injuries sustained by a pedestrian who stepped on a water meter lid that flipped. *Id.* That case involved evidence that the county "had ignored the requirements of its own Design Manual regarding the selection and installation of the water meter lid," creating a "trap." *Id.* at 132, 141. The issue in *Fratantuono*, however, was whether the county had governmental immunity because the meter pit was located in a grassy area adjacent to the sidewalk. *Id.* Notice was not at issue on appeal. *Id.* at 137 n.2.

defects, and that certain of its employees knew that the pedestrian signals sometimes become misaligned, was legally insufficient to support a finding that the City had constructive notice" of a problem with the crossing signal. *Id.* at 386. *Accord Zilichikhis v. Montgomery Cnty*, 223 Md. App. 158, 190 (citing *Smith* for the proposition that constructive notice cannot be inferred from an alleged failure to conduct reasonable inspections); *Weisner*, 245 Md. at 230 (no showing that icy conditions "had prevailed for such a period of time that the city should have known about it and failed to take steps to remedy it").

Here, as in *Smith*, the nature of the alleged defect was not readily observable. Ms. White stated that, on the day of the fall, she did not "see anything" as she approached the water meter, and Mr. Estep testified that he had never "observed anything other than looking at a normal meter" before Ms. White's fall. There was no evidence that the meter lid was broken when the last quarterly reading was taken, and it was undisputed that, despite the DPW's small staff, conditions observed to be defective or dangerous were abated or marked as hazardous within an hour. There was nothing to suggest that a problem had been relayed to the Town.

Moreover, there was no evidence of what was wrong with the meter lid, how long the alleged defect had existed, or that anyone had reported the particular water meter lid to the Town. Mr. Bowen testified that, before the incident, the Town did not have knowledge that the meter lid was broken or that anything was wrong with it. He also noted that, since

he began his employment with the DPW in 2007, he was not aware of a water meter lid cracking into pieces.

Ms. White argues that, because the Town did not "do proper inspections, make proper records that they did proper inspections, or keep traceable and provably reliable business record on all prior incidents" involving its water meter lids, it cannot claim "lack of [constructive] notice" as a defense. Maryland law, however, "does not impose a duty on municipalities to conduct regular inspections of their roadways," *Smith*, 156 Md. App. at 385, and it does not require a property owner to keep records of reported defects or dangerous conditions. *See Maans v. Giant of Maryland, L.L.C.*, 161 Md. App. 620, 635 (no duty under Maryland law to "keep records in order to lighten the invitee's burden of proving negligence"), *cert. denied*, 388 Md. 98 (2005).

Under the facts here, there was no evidence to support a finding that the Town had actual or constructive notice of any defect.[12] The circuit court did not err in granting the Town's motion for JNOV.

[12] Although there was evidence that other water meter lids had in the past become loose or dislodged, sometimes causing injury, and that the collar part of the lids sometimes cracked, this evidence was insufficient to show constructive notice of the particular condition at issue in this case. *See Williams v. Mayor of Baltimore City*, 245 Md. App. 428, 446 (2020) (mere fact that city knew of defective hydrant did not put it on notice of distinct and particular danger involving road conditions); *Colbert v. Mayor and City Council of Baltimore*, 235 Md. App. 581, 589-90 (2018) (even assuming the City was not keeping up with maintenance, leaks in close proximity to plaintiff's home, but not in the water main at issue, "fell short of establishing that the City had actual or constructive notice" of the defective condition).

II.

Exclusion of Evidence of Prior Incident

Ms. White also contends that the circuit court erred in not allowing in evidence of a prior incident involving an injury from a water meter lid. She asserts that this evidence put the Town on notice of its "need to conduct a review of the safety of" its water meter lids. For the reasons stated below, we find no error in the court's exclusion of this evidence.

A.

Proceedings Below

At the conclusion of Ms. White's testimony, her counsel moved to introduce into evidence deposition testimony from another case involving an injury related to a water meter lid. The deposition testimony, which was from Ms. White's sister-in-law, Julie Mitchell, who was deceased at the time of trial, involved a separate lawsuit stemming from injuries she sustained after stepping on a different water meter lid that had become unsecured from the pit. Ms. Mitchell had testified that she stepped on a water meter lid in a grassy area outside of a residence, it moved, and her left leg fell into the hole. Ms. White's counsel argued that evidence of the earlier incident, which occurred five or six weeks prior to Ms. White's accident, and which Ms. Mitchell had reported to the Town, was relevant to whether the Town had notice of potential hazards associated with the water meter lids.

Ms. White's counsel contended that, because the two water meter lids were "substantially identical," and their "[t]ime, place, and location" were also very similar, they should be admissible to show notice. Counsel argued that the evidence would not "cause an unfair surprise or confusion" because the Town had "fully investigated" the prior incident, obtained a witness statement from its employee, and was subject to a deposition in that case.

The Town objected to admission of the evidence, asserting that the circumstances in the present case were not similar to the prior incident because the water meter in that incident did not break in half and was in "a completely different part of Town in a residential area where cars drive over."[13] The Town argued that evidence that one of the other 595 meter lids in the town had an issue unrelated to the broken lid in this matter was "wholly irrelevant" to this case and not admissible to show constructive notice of a defect.

The court excluded the evidence of the prior incident on the ground that its "probative value [was] outweighed by the prejudicial value." The court stated:

> If it were the same defect, I would allow it in, but . . . the proffer is not that it's the same defect, that there was a person who -- you know, the lid could have just been loose, not defective, and I think that that doesn't put the County on notice, you know, so I'm going to exclude the testimony.
>
> * * *
>
> [J]ust so you're clear, I understand that other incidents can be admitted in order to demonstrate notice, but in this particular case, . . . because of the

[13] The transcript indicates that counsel for the Town stated: "I have no objection to Ms. Mitchell's testimony." This appears to be an error. The context of the subsequent discussion that occurred at the bench indicates that counsel did object to the deposition testimony.

> different defect and a different location, then I don't think that . . . the prejudicial value outweighs the probative value, so I'm not going to admit the evidence.

Ms. White's counsel subsequently renewed her request to allow evidence of Ms. Mitchell's earlier accident involving a water meter lid. Ms. White's counsel argued that, by failing to properly document prior known issues with water meter lids, the Town was "sticking [its] head[] in the sand and saying we didn't have notice because we don't have documentation." She contended that the Town "kn[e]w of at least this one other incident that happened very similarly, and obviously other incidents where it was possible that these water meter lids were defective or could pose a hazard to the public, and they didn't document it, report it, or do anything about it." The Town again objected, arguing that the incidents were not similar because one involved a lid "possibly coming off" and the other involved a lid snapping in half. The court sustained the Town's objection and excluded the evidence.

B.

Standard of Review

We review a court's exclusion of evidence on the basis that its potential for prejudice outweighed its probative effect for an abuse of discretion. *Dehn v. Edgecombe*, 384 Md. 606, 628 (2005). *Accord Keyes v. Lerman*, 191 Md. App. 533, 547, *cert. denied,* 415 Md. 42 (2010).

C.

Analysis

Evidence of prior accidents or defects can be admissible in a negligence case, not as direct evidence, but rather to show the "dangerous nature or tendency" of the specific object or condition involved in the accident or that the defendant was on notice of the dangerous condition. *Locke, Inc. v. Sonnenleiter*, 208 Md. 443, 451-52 (1955) (evidence of prior accident involving "substantially identical" table toppling over in identical circumstances admissible to show notice). *Accord S. Mgmt. Corp. v. Mariner*, 144 Md. App. 188, 194 (2002) (evidence of prior fires involving different dryers admissible to show notice when they occurred in same apartment and were attached to the same clogged exhaust hose). Evidence of prior acts of alleged negligence, however, is prejudicial. *Lai v. Sagle*, 373 Md. 306, 319 (2003). Thus, for such evidence to be admissible, "there must be a . . . 'similarity of time, place and circumstance' and, in the discretion of the trial court, the evidence must not '[ ] cause an unfair surprise or confusion by raising collateral issues.'" *S. Mgmt.*, 144 Md. at 194 (quoting *Locke*, 208 Md. at 447-48). *See also Smith v. Hercules Co.*, 204 Md. 379, 385 (1954) (excluding evidence of prior fall on same day of accident at issue because the "circumstances [we]re not identical, ha[d] little probative value and [we]re calculated to prejudice the jury"). "[W]hen separate occurrences are independent and there is no necessary evidentiary connection between them," evidence of the prior occurrence should be excluded as it tends to be prejudicial and misleading. *Lai*, 373 Md. at 321.

Ms. White alleges that evidence of a prior incident occurring just six weeks prior to her fall, involving a water meter lid that had slid out of place and then flipped when a pedestrian in a grassy residential area stepped on it, was "comparable" and "similar" to the water meter lid that broke into pieces in this matter because both incidents involved water meter lids causing holes in residential walking paths. We disagree.

Although the prior incident that Ms. White sought to admit involved a water meter lid, the nature of the hazardous condition was different. Ms. White stepped on a secured water meter lid that broke into pieces, whereas the pedestrian in the prior incident stepped on a water meter lid that had already become dislodged from the pit and flipped, but did not break. The court properly noted that, "[i]f it were the same defect, I would allow it in, but . . . the proffer is not that it's the same defect." The court explained that the prior incident involved a loose lid, not a defective one, and therefore, it did not "put the County on notice," and its probative value was outweighed by the potential for prejudice. We agree. Because the nature of the hazardous condition involved in the prior incident, an unsecured but otherwise non-defective lid dislodged from the pit, was not substantially identical to the condition causing Ms. White's fall, a lid that broke into pieces, the circuit court did not abuse its discretion in excluding this evidence based on a finding that the probative value was outweighed by the likelihood of prejudice.

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.